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Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights of persons with disabilities

Note by the Secretary-General**

I. Introduction

1. The present note is submitted in accordance with Commission on Human Rights resolution 2000/51 of 25 April 2001,[1] in which the Commission requested the Secretary-General to report biennially to the General Assembly on the progress made as regards efforts to ensure the full recognition and enjoyment of the human rights of persons with disabilities. That request was approved by the Economic and Social Council in its decision 2000/268 of 28 July 2000.

2. The purpose of the note is to inform the General Assembly of significant developments in this area.

II. Treaty monitoring bodies

A. Committee on the Rights of the Child

3. The Committee on the Rights of the Child has systematically raised the issue of disabled children. In the light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities[2] and the recommendations that it adopted during its day of general discussion on the rights of children with disabilities, held on 6 October 1997 (see CRC/C/69, para. 338), the Committee has recommended the development of early identification programmes to prevent disabilities, implement alternative measures to the institutionalization of children with disabilities, and envisage awareness-raising campaigns to reduce discrimination against disabled children and encourage their inclusion into society.

4. With regard to the implementation of article 2 of the Convention on the Rights of the Child,[3] the Committee noted that insufficient measures have been adopted to ensure the full enjoyment by all children of the rights recognized by the Convention, in particular in relation to access to education and health services regarding vulnerable groups.

5. In light of article 23 of the Convention, which relates to the rights of mentally or physically disabled children and which is based on the principle that children with disabilities are entitled to a full and decent life in conditions which promote dignity, self-reliance and facilitate participation within society, the Committee has stated that States parties should develop programmes to facilitate the active participation in the community of children with disabilities. The Committee has encouraged an inclusive approach by which disabled children are included in mainstream facilities and in their natural environment, while still

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** The footnote requested by the General Assembly in resolution 54/248 was not included in the submission.

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receiving specialized programmes and facilities as needed. The Committee has expressed its concern about the lack of adequate infrastructure and the limited number of qualified staff and specialized institutions for such children.

6. The Committee has also recommended the systematic and comprehensive collection of disaggregated quantitative and qualitative data for all areas covered by the Convention in relation to all groups of children, including disabled children, in order to monitor and evaluate the progress achieved and assess the impact of policies adopted with respect to children.

7. In one of its concluding observations, the Committee noted that, while the incidence of disability among the child population was low, disabled children have been the victims of abandonment and discrimination. In that regard, the Committee recommended that States parties to the Convention undertake further research on measures required to prevent and combat discrimination on the ground of disability.

8. The Committee has also expressed concern that, in certain cases, a large number of births are not supervised by qualified health-care workers and expressed alarm at the implications that this might have as regards an increased likelihood of sickness and disability arising from preventable problems that occur during delivery.

B. Committee on Economic, Social and Cultural Rights

9. The Committee on Economic, Social and Cultural Rights has done important work in interpreting international legal principles applicable to persons with disabilities. In its General Comment No. 5 (1994) on disability, the Committee defined the rights of persons with disabilities and made explicit reference to their right to physical and mental health, which implied the right to have access to, and to benefit from, those medical and social services that would enable them to sustain and reach their optimum level of independence and functioning. In its General Comment No. 14 (2000), the Committee adopted an operational approach to the right to the highest attainable standard of health, and reaffirmed the provisions of General Comment No. 5, in particular as concerns the right to physical and mental health. The Committee stressed the need to ensure that not only the public health sector but also private providers of health services and facilities comply with the principle of non-discrimination in relation to persons with disabilities.

10. In a concluding observation, the Committee on Economic, Social and Cultural Rights, noted that United Nations declarations in relation to certain groups of individuals, such as minorities, indigenous peoples, detainees and disabled persons, had not yet been fully translated into binding instruments, and that provisions regarding some of those groups were contained in international treaties, such as the International Covenant on Civil and Political Rights, the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries or the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education (E/C.12/1998/23, para. 117).

11. The Committee has also drawn attention to the specific situation of persons with mental illness and disability and the need for legislation to ensure that their rights under the Covenant are fully protected (E/C.12/1/Add.10, para. 43).

C. Committee on the Elimination of Discrimination against Women

12. In a number of its concluding observations, the Committee on the Elimination of Discrimination against Women has noted that, although it is difficult to collect data on the incidence of disability and on the rights of persons with disabilities, one conclusion that could be drawn easily is that persons with disabilities often live in substandard conditions. Malnutrition, as well as the lack of health care, in particular prenatal, delivery and postnatal care, and the lack of immunization programmes for women and children are among the major causes of disability.

III. Mechanisms of the Commission on Human Rights

13. The Commission on Human Rights has continued to lay stress on the human rights of persons with disabilities. Moreover, during the fifty-seventh session of the Commission in 2001, some thematic rapporteurs

established the interrelationship between non-respect for human rights and disability.

14. In his first report to the Commission, its Special Rapporteur on adequate housing considered the interrelationship between non-respect for human rights and disability. With regard to the work of the treaty monitoring bodies on the issue of adequate housing, the Special Rapporteur noted various references to the right to adequate housing in General Comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights, concerning persons with disabilities. In that General Comment, the Committee referred to the effects of disability-based discrimination on housing. Quoting rule 4 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities,[4] the Committee stated that, in addition to the need to ensure that persons with disabilities have access to adequate food, accessible housing and other basic material needs, it was also necessary to ensure that support services, including assisting devices were available for persons with disabilities, so as to assist them in increasing their level of independence in their daily life and in exercising their rights. Moreover, in her report (E/CN.4/2001/53), the Special Rapporteur of the Commission on the right to food noted an inter-agency study[5] which reaffirmed that permanent and serious undernourishment and malnutrition cause early death and numerous diseases, which almost invariably entail serious disability, for example, underdevelopment of brain cells in babies and blindness caused by vitamin A deficiency. According to the study, chronic hunger and permanent, serious malnutrition can also be an hereditary curse: every year, tens of millions of seriously undernourished mothers give birth to tens of millions of seriously affected babies.

15. The Special Rapporteur of the Commission on the situation of human rights in Afghanistan mentioned in his report (E/CN.4/2001/43 and Add.1) that the impact of the ongoing conflict added victims each day, both through physical violence and mental stress, and that it was estimated that 3 to 4 per cent of the population of Afghanistan were disabled to the point of needing some kind of service and assistance.

16. In the report of the Secretary-General on the protection of human rights in the context of HIV/AIDS (E/CN.4/2001/80), it was noted that all new legislation should specifically refer to the prohibition of discrimination on the grounds of disability.

IV. Activities of the Office of the United Nations High Commissioner for Human Rights

17. The Special Rapporteur of the Commission for Social Development on disability was appointed in 1994 to follow-up the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. Within the framework of his mandate, he was requested to report every two years to the Commission on Human Rights. In accordance with that request, the Special Rapporteur presented his reports to the Commission in 1996, 1998 and 2000. By resolution 2000/51, the Commission invited the United Nations High Commissioner for Human Rights, in cooperation with the Special Rapporteur on disability, to examine measures to strengthen the protection and monitoring of the human rights of persons with disabilities and to solicit input and proposals from interested parties. By that resolution, the Commission challenged the Special Rapporteur and the human rights community to translate into concrete action international norms and standards which could have an impact on the work of the Commission and on the mechanisms that it has established, such as the country and thematic rapporteurs.

18. In pursuance of the above-mentioned resolution, the Special Rapporteur organized a seminar to discuss ways and means of implementing the resolution and of strengthening the human rights dimension in the debate on disability. The objective of the seminar, which was held at Stockholm in November 2000, was the elaboration of guidelines for identifying and reporting human rights violations and abuse against persons with disabilities. The seminar made recommendations to the human rights community and the disability community.

19. Also in pursuance of the resolution, the Office of the United Nations High Commissioner for Human Rights has decided to strengthen its work for disability. It has reinforced its support for the work of the Special Rapporteur and will place increased emphasis on the issue of disability in two areas: (a) encouraging United Nations human rights mechanisms, including the special rapporteurs and treaty bodies, to pay greater attention to the rights of persons with disabilities; and (b) encouraging non-governmental organizations concerned with the question of disability to increase their interaction with United Nations human rights mechanisms.

20. The Cambodia office of the High Commission has, for example, participated in a non-governmental working group on disabled persons which reviewed the preparation of a law on disability that addresses the rights of the disabled, including issues of non-discrimination, health and safety. Within the framework of a technical cooperation project undertaken in Uganda by the Office of the High Commissioner (see E/CN.4/2001/104, annex I), preparations were completed for the launch of a public hearing on disability on 23 October 2000.

21. On 17 April 2001, during the fifty-seventh session of the Commission on Human Rights, the Office of the High Commissioner organized a consultative meeting of Governments, intergovernmental and non-governmental organizations, specialized agencies and United Nations bodies, as well as national institutions, including national human rights commissions, on human rights and disability. The consultations reaffirmed the human rights dimension of disability and the need to strengthen the link between the Special Rapporteur of the Commission for Social Development and the High Commissioner for Human Rights and Commission on Human Rights. The consultations allowed non-governmental organizations concerned with disability to affirm their intention to work closely with the international human rights mechanisms and national human rights institutions and to reaffirm their commitment to ensuring that, in their work, appropriate attention is given to the human rights of persons with disabilities. The consultations permitted national institutions to share their experiences as regards good practice in protecting and promoting the rights of persons with disabilities.

22. The consultative meeting was opened by the High Commissioner for Human Rights and chaired by the Special Rapporteur of the Commission for Social Development on disability. The Special Rapporteur recalled that he was due to submit his final report to the Commission for Social Development at its fortieth session in 2002 and that the coming year would be decisive in redefining an international policy on disability. The meeting called upon Governments to be involved in the promotion and protection of the human rights of persons with disabilities and to take concrete steps to that effect. The question of whether or not an international convention on disability should be drafted was also discussed. Opinions diverged on that particular issue, although there was general agreement on the need to give more prominence to disability matters at the international level, in particular within a human rights framework.

23. Pursuant to Commission on Human Rights resolution 2000/51, in which the Commission called upon the Special Rapporteur and the High Commissioner to examine measures to strengthen the protection and monitoring of the human rights of persons with disabilities, the Office of the High Commissioner has designed a project which would, inter alia, provide a conceptual framework for the recognition of the human rights dimension of disability and assist the High Commissioner in raising international and national commitment to the question of disability. The first activity of the project should be the publication of a study on human rights and disability which would make an inventory of and evaluate existing standards and institutions in the field of disability and which would propose options for the future. The study would also review the way in which human rights mechanisms, including the treaty monitoring bodies, are considering the issue of disability.

Notes

[1] See *Official Records of the Economic and Social Council, 2000, Supplement No. 3* and corrigendum (E/2000/3 and Corr.1), chap. II, sect. A.

[2] General Assembly resolution 48/96, annex.

[3] General Assembly resolution 44/25, annex.

[4] General Assembly resolution 48/96, annex.

[5] Subcommittee on Nutrition of the Administrative Committee on Coordination in collaboration with the International Food Policy Research Institute, *Fourth Report on the World Nutrition Situation: Nutrition Throughout the Life Cycle*, Geneva, January 2000 (English only).